IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.159 OF 1989

The State of Maharashtra .... Appellant

- Versus -

1. Nicolas @ Tambi S. Babu,
   age 23 years, r/o Datta
   Kutir, Ambernath,
   District: Thane.
2. Raju @ Rajya Murges,
   age 25 years, r/o Datta
   Kutir, Ambernath,
   District: Thane. .... Respondents

Shri B.H. Mehta, Addl. Public Prosecutor, for the Appellant-State.
Shri Niteen Jamdar (Appointed) for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: APRIL 01, 2005

ORAL JUDGMENT (Per P.V.Kakade, J.):

1. The State has preferred this appeal against the judgment and order dated 29-12-1988 passed by the Judicial Magistrate, F.C. (Railway) Court, Kalyan whereby both the respondents/accused were convicted for commission of the offence punishable under Section 394 r/w Section 34 of the Indian Penal Code and were sentenced to suffer R.I. for one month and to pay fine of Rs.100/- each, in default to undergo S.I. for three days more.

2. The present appeal is preferred by the State for enhancement of the punishment on the ground that the punishment awarded by the learned J.M.F.C. is substantially inadequate if one considers the nature of the offence committed by the respondents.

3. We have heard the learned A.P.P. as well as the learned Advocate for the respondents.

4. It was the prosecution case that on 6-1-1988 the complainant Ramkishore was travelling in the first class compartment of the local train from Ulhasnagar to Bombay V.T., and as the local train arrived on the platform, the complainant entered into the first class compartment. There were 3 to 4 passengers in the said compartment. When the train started moving, two persons aged about 22-25 years entered into the compartment and

showed knife to the complainant and under the threats of injury, took money and the wrist watch from his pocket. One of the two persons gave a knife blow to the complainant while the other forcibly gave the knife blow on the right hand near the palm which resulted in bleeding injury. After taking away the property from the complainant, the culprits ran away when the next station arrived. The complainant filed his complaint in due course at the police station, Kalyan railway and offence was registered and the investigation commenced.

5. In the course of the investigation, the respondents were arrested and the property was recovered from a money lender to whom it was allegedly sold. On completion of the investigation, charge-sheet was sent to the Court of law.

6. The learned trial Judge framed the charge for the offence against the accused. Both the accused pleaded not guilty of the offence punishable under Section 394 r/w Section 34 of the IPC and claimed to be tried. Their defence was of total denial. After hearing both the sides and recording their evidence, the trial Court came to the conclusion that the offence was proved and the punishment as aforesaid was awarded to both the accused in the aforesaid manner. As the State was of the view that the punishment awarded was too inadequate

considering the nature of the crime, the present appeal has been filed.

7. At the outset, it may be noted that though the offence punishable under Section 394 is per se serious in nature and is punishable with imprisonment for life or with rigorous imprisonment for a term which may extend to ten years and fine, the ingredients thereof show that the offence would be complete when the hurt was caused to the victim voluntarily while committing or attempting to commit robbery. It is true that the offence punishable with extreme penalty of life imprisonment or imprisonment for more than ten years and fine, however, we cannot overlook the facts involved in the present case and in the circumstances in which the offence has been committed. The offence is committed in the moving train and the respondents appear to have snatched away a wrist watch and money out of which the watch is recovered and returned to the complainant. There is no medical evidence on record to show that in fact injuries were caused by the respondents on the complainant and as such it cannot be said that grievous injury was voluntarily caused by the respondents while committing the offence. Be as it may, the fact remains that both the respondents are punished with R.I. for one month and to pay fine of Rs.100/- each, in default to suffer R.I. for three days more which, in our

considered view, would be sufficient to meet the ends of justice. This is especially so when we are hearing the appeal in the year 2005 which was filed in the year 1989. Therefore, on merits as well as for the reasons recorded hereinabove, we are of the view that the State has failed to make out a case for enhancement of the punishment for the offence in view of the facts and circumstances of the case. It cannot be over emphasized that the sentence to be awarded has to be commensurate with the gravity of the offence. Hence no interference is called for in this case.

8. Before concluding the judgment, it is to be noted that Shri Niteen Jamdar, the learned Advocate for the respondents, has been appointed in this matter and he has assisted the Court in proper manner and we appreciate his efforts in that regard.

9. In the result, the appeal stands dismissed.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)